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MedStar Health

CHS-1930

VIA FACSIMILE and U.S. MAIL

September 15, 2008

Pamela W. Barclay
Director, Center for Hospital Services
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215-2299

Re: Request for Change in the Acute Inpatient Rehabilitation Services Section of the State Health Plan by Calvert Memorial Hospital

Dear Ms. Barclay:

MedStar Health offers the following comments in opposition to the July 2, 2008 request by Calvert Memorial Hospital to change the State Health Plan for Facilities and Services: Specialized Health Care Services – Acute Inpatient Rehabilitation Services (COMAR 10.24.09) on behalf of Good Samaritan Hospital, a rehabilitation provider in Baltimore and National Rehabilitation Hospital, a rehabilitation provider serving the Washington, Metropolitan Area.

Calvert Memorial Hospital has requested that the certificate of need docketing rule [COMAR 10.24.09.04 C. (1)] and certificate of need approval rule [COMAR 10.24.09.04 C. (2)] be eliminated or in the alternative, that the policies be waived in a planning region where the sole provider of inpatient rehabilitation services has failed to meet minimum occupancy requirements.

In support of its request, Calvert Memorial Hospital posits that it is developing a Center of Excellence in Neurosciences and seeks to institute a Comprehensive Integrated Inpatient Rehabilitation Program (CIRP), and points out that the docketing and approval rules in the State Health Plan will only permit docketing and approval of new or expanded inpatient rehabilitation programs in a regional service area if, 1) all certificate of need approved and exempted beds are operating, and 2) the average occupancy over the past 12-month period of all licensed inpatient rehabilitation beds in a regional service area is equal to or greater than a minimum occupancy based on the total licensed rehabilitation capacity of the regional service area. Calvert Memorial notes that Laurel Regional Hospital, the sole inpatient rehabilitation provider in its regional service area, is operating below the occupancy threshold level of 80%, thus a certificate of need application that would be submitted by Calvert Memorial would not be eligible for docketing or approval by the Maryland Health Care Commission. What Calvert Memorial fails to mention in its petition is that the aggregate average occupancy rate for Maryland rehabilitation providers is below the minimum occupancy level of 80%, suggesting that utilization of rehabilitation beds is a statewide issue and not unique to the Southern Maryland regional service area. Adding beds is not a solution to this situation.

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MedStar Health opposes the proposed amendments for several reasons.

First, the proposed changes are significant enough that the policy changes should be addressed as part of a comprehensive assessment of rehabilitation services and policies through a normal update of the State Health Plan, and not though the petition process.

The proposed amendments would change the Commission's policy approach to all certificate of need reviews for rehabilitation services as the amendment would apply to brain and spinal cord injury programs and to all freestanding rehabilitation hospitals, the implications of which have not been considered. The proposed changes should be vetted by a work group of rehabilitation providers and other affected parties, as is routine in updates to most State Health Plan chapters. The work group should consider, for example, current utilization trends, impact of technology on the delivery of rehabilitation services, reimbursement policies that discourage the use of inpatient rehabilitation programs and use of less intensive outpatient and long-term care rehabilitation programs, shortages of specialized rehabilitation personnel, and specifically new Medicare policies that target medical necessity of rehabilitation services including Medicare Recovery Audit Contractor (RAC) program to be implemented in Maryland in 2009. Acute inpatient rehabilitation programs have been specifically targeted in states that have implemented RAC audits for medical necessity and over reimbursement.

Second, MedStar Health opposes the proposed rule changes because, without a need projection for rehabilitation services, the docketing and approval rules are the only objective criteria for assessing the need for new or expanded services, and efficiency of existing services, as well as an indicator of the impact of new programs on existing rehabilitation providers. Specifically, the current docketing rule establishes minimum occupancy rates for existing rehabilitation providers as a way to gauge need for additional beds and the efficient use of existing beds. Since the Commission has no need projection for rehabilitation services, the docketing and approval policies are more important than they would be if the Commission had developed a need projection for this service. A review of inpatient rehabilitation utilization in Maryland shows admissions and occupancy rates are low and have remained essentially unchanged since 2003 when the last data on inpatient rehabilitation utilization were published. The absence of a need projection, combined with the proposed policy change, leaves the Commission without an objective basis for deciding the appropriate number and distribution of rehabilitation services.

Calvert Memorial argues the State Health Plan for inpatient rehabilitation services has not been updated in ten years and there have been many changes in the delivery and financing of rehabilitation services since the last update. Calvert cites unspecified "developments in the field of rehabilitation medicine which has led to our planning efforts to institute the Center of Excellence in Neurosciences at the Hospital" as the justification of its request. While we agree with Calvert's observation that there have been developments in the field of rehabilitation medicine over the past ten years that should be considered, it is also important that those considerations include developments in the delivery and reimbursement of inpatient

rehabilitation services that have resulted in the decline and closure of many inpatient rehabilitation programs across the country, including here in Maryland. Calvert does not present a compelling case for changing the current policies. The only support offered for a policy change is actually an argument for the petitioner's institutional objectives. No evidence of unmet rehabilitation system need has been demonstrated. To suggest that an underperforming program (Laurel Regional Hospital) is evidence of unmet need is on its face insufficient to justify the changes the petitioner is proposing. In fact, the evidence supports the continuation of the existing policies.

Third, in support of its petition Calvert Memorial argues that other State Health Plan chapters have no docketing or approval rules or need projections. Calvert Memorial specially cites the obstetrics and ambulatory surgery service chapters as examples. It should be noted that while the subject chapters do not have what are titled "docketing" or "approval" rules, each of these chapters has very specific certificate of need review standards that set objective performance thresholds for the Commission to consider in its certificate of need decisions. These review standards establish, in each of the relevant chapters, minimum volume guidelines that applicants must meet in order to be approved, and maximum thresholds for impacting existing providers, and in one instance a community benefit standard that must be met. While not labeled "docketing" or "approval" rules, these review standards have the same effect of establishing performance thresholds that must be met for an application to be considered approvable. To simply eliminate the docketing and approval rules in the rehabilitation chapter would leave no effective program or review standards to guide the Commission's certificate of need decisions.

Further, inpatient rehabilitation services are classified by the Commission as a "specialized service." Other designated specialized services include: organ transplant services, cardiac surgery and percutaneous coronary interventional services and neonatal intensive care services. As such, the Commission recognizes that specialized services require a larger geographic and more substantial population base than other services to maintain professional skill and control costs. Commission policy as articulated in the State Health Plan's principles for specialized services states that the "Commission will consider and incorporate **objective evidence of adequate volume for specific category of specialized health services.** In measuring system capacity to determine whether additional programs should be considered, the Commission will seek to balance access, quality and cost considerations."

Absent the docketing and approval rules, the rehabilitation chapter would be devoid of any objective measures to guide certificate of need decisions. Each of the State Health Plan chapters for "specialized services" contains specific threshold volume standards, minimum volume standards, and/or a methodology for determining need that provide the basis for the Commission to balance access, quality and cost-effectiveness objectives.

The Acute Rehabilitation Service chapter has the fewest program policies and objective standards as compared with other specialized services chapters. Calvert Memorial's proposal is asking the Commission to eliminate the objective and reasonable docketing and approval rules

leaving only a few minor certificate of need review standards, none which is related to need. This would be inconsistent with the single most important principle of a state health plan chapter—whether and under what circumstances new specialized services are needed.

For the reasons outlined above, MedStar Health urges the Commission to reject the petition by Calvert Memorial Hospital because it is inconsistent with the policies for specialized services, leaves no objective standard for certificate of need reviews for rehabilitation services, and fails to justify a policy change other than to achieve its own institutional objectives.

Sincerely,

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